



In the Missouri Court of Appeals Eastern District

DIVISION III

STATE OF MISSOURI,)	No. ED100132
)	
Respondent,)	Appeal from the Circuit Court
)	of the City of St. Louis
vs.)	
)	Honorable Robin R. Vannoy
JAMES KUEHNLEIN,)	
)	
Appellant.)	FILED: March 10, 2015

Before: Kurt S. Odenwald, P.J., Robert G. Dowd, Jr., J., and Gary M. Gaertner, Jr., J.
PER CURIAM.

OPINION SUMMARY

Appellant James Kuehnlein (“Kuehnlein”) appeals from the judgment of the trial court entered upon a jury verdict finding him guilty of one count of second-degree domestic assault in violation of Section 565.073 and one count of third-degree domestic assault in violation of Section 566.074. Kuehnlein was sentenced to a total of five years of imprisonment with execution of the sentence suspended for three years. In his first five points on appeal, Kuehnlein alleges the trial court violated his Sixth Amendment rights under the Confrontation Clause by excluding certain cross-examination, argument, and evidence at trial. In his sixth point on appeal, Kuehnlein argues that the trial court erred when it refused to instruct the jury on third-degree domestic assault as a lesser included offense of the charge of second-degree domestic assault based on choking.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Division III holds: The trial court did not err when it limited Kuehnlein’s cross-examination of witnesses and argument, and excluded certain evidence at trial. Because an extended opinion addressing these points on appeal would have no precedential value, we affirm the trial court judgment entered upon the jury’s verdict finding Kuehnlein guilty of one count of third-degree

domestic assault pursuant to Rule 30.25(b). We have provided the parties with a memorandum setting forth the reasons for our decision addressing these points on appeal.

However, with regard to the judgment entered on second-degree domestic assault, the record contains evidence that would provide a basis for acquitting Kuehnlein of second-degree domestic assault and convicting him of third-degree domestic assault. Given this fact, the trial court erred when it refused to instruct the jury on third-degree domestic assault. Accordingly, we reverse the trial court's judgment and remand for a new trial on the charge of second-degree domestic assault.

Opinion by: PER CURIAM

Attorney for Appellant: Kathryn Parish

Attorney for Respondent: Chris Koster and Shaun Mackelprang

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.